

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1349

August 30, 1960

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, 2, N.J.

BULLETIN 1349

August 30, 1960

.. APPELLATE DECISIONS - TOZZI'S TAVERN, INC. v. PLAINFIELD AND
MADISON LIQUORS, INC.

TOZZI'S TAVERN, INC., A NEW JERSEY)
CORPORATION AND FRANK R. TOZZI, JAMES)
V. TOZZI AND MARIE TOZZI, individually,)

Appellants,)

v.)

COMMON COUNCIL OF THE CITY OF PLAINFIELD)
AND MADISON LIQUORS, INC., A NEW JERSEY)
CORPORATION,)

Respondents.)

ON APPEAL
CONCLUSIONS
AND ORDER

Charles S. Joelson, Esq., Attorney for Appellants.
Sachar, Sachar and Bernstein, Esqs., by Edward Sachar, Esq.,
Attorneys for Respondent Common Council of the
City of Plainfield.
Green and Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys for
Respondent Madison Liquors, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Common Council whereby on January 18, 1960 the members thereof by a six to four vote granted to respondent Madison Liquors, Inc., its application for a place-to-place transfer of its plenary retail distribution license D-9 from 303A - 305 Madison Avenue to 229 Grant Avenue, Plainfield.

"Appellants petition of appeal sets forth substantially the following grounds for reversal of the Council's action: (1) On December 7, 1959 the Council denied a similar application giving as reasons that there was no public need and necessity; that it would be a detriment to the area and adverse to the interests of residents in the neighborhood and would not be in the public interest and that there is no change in the circumstances which would require a reversal of such denial. (2) A re-statement of the above grounds as presently applicable. (3) That the area of the proposed location is serviced by a minimum of six other licensed premises and does not need an additional liquor outlet. (4) That the transfer would increase the traffic hazard. (5) That there is insufficient off-street parking available thus increasing the street parking problem. (6) That such transfer would be detrimental to the use of the street by school children and adverse to their welfare. (7) That such transfer would adversely affect real estate values in the area. (8) That the proposed removal of an industrial plant located in the area would cause a population shift with a consequent lesser requirement for liquor outlets in the proposed area. (9) That such transfer would tend to create undue competition with other licensees now located there.

"Preliminary to the consideration of these grounds, there is an attack on the votes of the Council in that the appellants

maintain that a member of the Council who voted to deny the transfer at the December 7th meeting had no reason to change his vote and vote in the affirmative at the January 18th meeting and, hence, should have been considered as having voted in the negative thus resulting in a five to five tie vote, insufficient to constitute a majority vote in favor of the transfer.

"The appellants are in error in their construction of the legal effect of the vote. The Council consists of eleven members. One of such members, although proposing a resolution to grant the transfer, abstained from voting thereon because of the stated reason that an objector was one of his clients. This left a ten member Board. Even disregarding the vote of the member who changed his vote from negative to affirmative, it would leave a nine member quorum. A majority of such quorum, that is, five members, might and did legally determine to grant such transfer. Manno vs. Clifton, 14 N.J. Super. 100; Lykosh vs. Perth Amboy and Krecz, Bulletin 1295, Item 1.

"Absent, as here, a personal interest in the matter such as to infect the whole body and render its action voidable, as illustrated by Tp. Committee of Freehold Tp. vs. Gelber, 26 N.J. Super. 388 (Sup. Ct. App. Div. 1953), and if the objectionable vote is disregarded, it is not to be added to those voting in the negative. (Cf. Kozusko vs. Garretson, 102 N.J.L. 508; Lykosh vs. Perth Amboy and Krecz, supra.)

"The next objection to be considered is whether the respondent Council as now constituted may disregard the action of its predecessor Council on December 7, 1959. Then, as now, the Council consisted of eleven members. Five new members were elected and took office in January 1960. On January 18, 1960 four of these new members, the member who had changed his vote, and a member of the present Council, who had on December 7, 1959 voted to grant the transfer, voted at this meeting to grant the transfer. One new member and three old members voted to deny. The member who had previously abstained, again abstained from voting.

"As was said in Northend Tavern, Inc. vs. Northvale and Payne, Bulletin 493, Item 5:

'While, in the interest of uniformity, it might be desirable that a succeeding governing body adhere as closely as possible to the policies theretofore enunciated by a former body, it cannot be said that a deviation from those policies is necessarily arbitrary or unreasonable. On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Cf. Rafalowski v. Trenton, supra; Lewis v. Phillipsburg, Bulletin 232, Item 13.'

"Where there is room for latitude of opinion in cases of this kind, that is, room for a reasonable difference of opinion concerning the desirability of transferring a license, the successor Board is free to exercise its own discretion.

"Each application is a separate one and must be decided in the sound discretion of the local issuing authority as constituted at the time the application is considered. Whalan vs. Mt. Olive Township and Thompson, Bulletin 1103, Item 2.

"In the matter of lapse of time between filing of successive similar applications, it is to be noted that in the Northend case an application was filed in July 1940 and was denied. A similar

application was filed on December 4, 1940 and denied. A third application was filed in January 1941 and was granted. Such grant was upheld on appeal. Similarly, in Enno, et als. vs. Howell Township and Hyman, Bulletin 1120, Item 6, the first application to transfer was filed on October 12, 1953 and denied. The second application was filed on July 12, 1954 and denied, such denial being affirmed on appeal. A third application was filed on August 23, 1955 and withdrawn by the applicant on September 26, 1955. A fourth application was filed on October 12, 1955 and granted, and such grant was affirmed on appeal. In the cases cited there had been a change in the membership of the issuing authority.

"This leads to a consideration of the reasons which impelled the respective Councils in the instant case to come to different conclusions. The primary factor on this appeal, irrespective of such conflict, is whether the present Council, in the exercise of its discretion, could reasonably conclude that a transfer of the license would be in the public interest despite the contrary opinion of the predecessor Council.

"In both instances the grant of the transfer was recommended by the Chief of Police, Police Board and the Committee of the Whole, which committee comprises the entire membership of the Council. The Council then convened to take formal action on the application. When the first application was considered, objections were then presented by the minister of the Grant Avenue Presbyterian Church, and in the form of a petition signed by thirty-nine persons, petition signed by five retail licensees and letters from trade associations. The minutes of the meeting read that after an opportunity had been given for all persons to be heard (the nature of these objections are not disclosed), the transfer was denied by an eight to two vote, one member abstaining. The reasons for denial were stated as an afterthought upon the suggestion of counsel that reasons were required. These reasons are summarized in the first ground of appeal hereinabove.

"When the Council convened on January 18th with similar recommendations to grant as those on the first application, letters of objection were presented from the ministers of two churches, from a veterans organization, from a tavern association, from the present appellants and another individual, and three petitions, one from four retail licensees and two from other persons opposing the transfer. Five letters from persons in favor of the transfer were presented. At the meeting seven persons appeared in person who were in favor of the transfer and a petition signed by forty-four persons in favor of the transfer was presented. Three objectors in person or by their attorney were present. The Commander of the veterans organization appeared and stated that the letter of objection from the Post was unauthorized. The nature of the contentions pro and con are not disclosed. The Council then moved that the hearing be closed. The minutes then recite that following explanation of their proposed vote by seven of the Councilmen, the motion to grant the transfer was adopted by the vote hereinabove referred to.

"As previously stated, the factor which governs decision on this appeal is whether the present Council exercised a reasonable discretion in granting transfer of the license from its present location to the proposed location.

"It appears that there are presently eleven package stores and six taverns east of Park Avenue, one of the streets bisecting the municipality, and four package stores including that of the respondent licensee and eleven taverns west of Park Avenue. There is a heavy concentration of both types of licenses within the area of two

blocks on either side of Park Avenue. Two taverns are located in close proximity to that of the appellant licensee, two others are nearby across the railroad. Four taverns and five package stores are concentrated in a small area close to the east side of Park Avenue. In the immediate vicinity of the presently licensed premises of Madison Liquors there is Red Bird Center, a club open to teenagers operated by the municipality, directly across from the licensed premises, a grammar school within a few hundred feet, a Board of Education building a block and a half away, a fire headquarters a block away and three churches within two blocks.

"The proposed new location is six blocks west of the present location. There is a tavern on the same block, and two other taverns spaced one block and five blocks west, respectively, and one tavern one block east. The nearest package store is in a supermarket on the other side of the railroad roughly three long blocks distant.

"Appellant's premises are located at 201 Grant Avenue on one corner of the block, and the proposed premises are one door away from the other corner. Between the two premises on the same side of the street there is located a barbershop, a food market, drug store, a pet shop (the proposed premises) and a dry cleaning establishment on the corner. The map in evidence indicates that there are five schools and churches in the area. Their exact location does not appear, and the respondent licensee has stated that the nearest church is three blocks distant. One of the ministers stated that he withdrew his objection after examining a map showing the location of the churches at the old premises. It seems quite clear that the transfer is from a concentration of licensed premises to an area where there is much less congestion of licensed premises. The respondent licensee states that the location to which its license has been transferred is much more convenient for many of its customers.

"The specific objections to such transfer at the appeal hearing were those presented by four nearby tavern owners in the area. The licensees urged that a large portion of their business was the sale of packaged alcoholic beverages, and hence, the location of a package store there would adversely affect their business interests. It has been consistently ruled by this Division that the mere fact that a transfer of a license may be contrary to the economic interest of an appellant is not a sufficient reason for setting it aside. Triangle Corp. et al. v. Camden and Silverstein, Bulletin 1276, Item 1.

"There was an exhaustive direct and cross examination of the member of the Council who changed his vote, designed to establish that he did so arbitrarily and without good reason. Such evidence discloses that he was equally not clear on both occasions concerning the reason which impelled him to vote as he did, but I see no need to make any specific detailed analysis thereof or make definitive finding on that score, since for the reasons above stated the resolution to grant the transfer was legally adopted by a majority of the quorum of the Council who were present, even disregarding such member's vote.

"Considerations of undue concentration of licensed liquor premises in the area, possible traffic hazard, and proximity to churches, when acting upon an application to transfer a license, are matters entrusted to the sound discretion of the issuing authority. Miles et als. v. Paterson and Stefonich, Bulletin 1306, Item 2; Geltzeiler v. Newark, Bulletin 1171, Item 1.

"The burden of proof to establish that the action of respondent Council was erroneous rests with appellants. Rule 6 of State Regulation No. 15. The evidence presented does not indicate any improper motivation on the part of the members of Council and their grant of the transfer appears to be a reasonable exercise

of their discretion. In my opinion, appellants have failed to sustain the burden of proof resting upon them. I, therefore, recommend that an order be entered affirming the action of respondent Council and dismissing the appeal."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereon were filed by the attorney for appellants, and written answering arguments were filed by the attorneys for respondent Council and the attorneys for respondent licensee.

I have given careful consideration to the evidence, exhibits, briefs filed with the Hearer, the Hearer's Report, and the written arguments of the respective counsel regarding the exceptions thereto, and concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall, therefore, affirm respondent Council's action.

Accordingly, it is, on this 30th day of June 1960,

ORDERED that the action of respondent Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

- SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES BY LICENSEE IN VEHICLE NOT AUTHORIZED TO TRANSPORT ALCOHOLIC BEVERAGES - LICENSEE'S APPLICATION FOR RETURN OF VEHICLE AND ALCOHOLIC BEVERAGES DENIED FOR LACK OF GOOD FAITH - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
January 13, 1960 of a quantity of)
alcoholic beverages and a Chrysler)
sedan at the intersection of 6th)
and Cherry Streets, in the City of)
Camden, County of Camden and State)
of New Jersey.)

Case No. 10,202

CONCLUSIONS
AND ORDER

Cahill & Wilinski, Esqs., by Robert Wilinski, Esq., Attorneys for Caridi's Bar, Inc.

I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This matter came on for hearing pursuant to R.S. 33:1-66 and further pursuant to a stipulation dated January 14, 1960 signed by Patrick Caridi on behalf of Caridi's Bar, Inc. to determine whether a Chrysler sedan, and 69 four-fifth bottles of whiskey and 12 four-fifth bottles of wine, described in a schedule attached hereto, seized on January 13, 1960 at the intersection of 6th and Cherry Streets, Camden, New Jersey, constitute unlawful property and should be forfeited.

"At the time of the seizure Patrick Caridi, on behalf of Caridi's Bar, Inc., the registered owner of the Chrysler sedan, deposited \$1200.00 in cash under protest pursuant to R.S. 33:1-66 with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of such Chrysler sedan, and thereupon obtained return of the motor vehicle. Thereafter Patrick Caridi, on behalf of the corporate licensee, entered into

a written stipulation that the Director determine in these seizure proceedings whether such sum of \$1200.00 should be forfeited, or returned to such licensee.

"At the hearing in the case held as aforesaid, an appearance was entered on behalf of Caridi's Bar, Inc. which sought return of the aforementioned deposit of \$1200.00, and also of the seized alcoholic beverages.

"The seizure was made by ABC agents on the above date and location because the licensee was transporting the alcoholic beverages in its vehicle, which was not licensed to transport alcoholic beverages, did not have any transit insignia as required by R.S. 33:1-28 and Patrick Caridi, the driver, did not have in his possession a waybill, invoice, or other document evidencing the consignor, consignee and description of the alcoholic beverages, as required by Rule 4 of Regulation No. 17. These facts are conceded to be accurate, and the licensee has pleaded non vult to disciplinary charges instituted against it because of such unlawful transportation.

"The alcoholic beverages and the Chrysler sedan in which they were transported constitute unlawful property and are subject to forfeiture because of the failure to comply with the law and regulation governing the transportation of alcoholic beverages by a licensee. R.S. 33:1-1(i & y), R.S. 33:1-2, R.S. 33:1-28, R.S. 33:1-66.

"Whether or not the licensee should be relieved of forfeiture of the alcoholic beverages and the Chrysler sedan, that is, the \$1200.00 in cash deposited in place thereof, is a matter for the Director's discretionary authority, as provided for by R.S. 33:1-66(e). If the Director is satisfied that the licensee acted in good faith, and unknowingly violated the law, it is entitled to the Director's favorable consideration. On the other hand, if it was transporting the alcoholic beverages in furtherance of an illegitimate venture, such as, for instance, ultimate delivery in Pennsylvania, it does not deserve the Director's consideration.

"The licensee had suffered a suspension of its license after pleading non vult, previous to January 13th, to a charge that on December 20, 1958 it aided and abetted another person to transport alcoholic beverages from its licensed premises in New Jersey to Philadelphia, Pennsylvania, which state prohibits such importation. Re Caridi, Bulletin 1324, Item 6. When apprehended, the agents apparently suspected that the alcoholic beverages were likewise being transported to Philadelphia. When questioned by the agents, Patrick Caridi at first refused to name the purchasers or give their addresses. About a half-hour later he gave the agents the names and addresses of three residents of New Jersey to whom he claimed he intended to deliver such alcoholic beverages. Some time later the agents questioned these persons at their homes. One of these persons differed with Caridi's statement as to the brands he was to receive and two persons ostensibly corroborated Caridi, but, in all, the three persons only claimed a total of 60 four-fifth quart bottles of whiskey out of the 69 such bottles being transported. These alleged purchasers were not present at the hearing, and their statements were not made under oath.

"At the hearing Patrick Caridi was asked to explain in greater detail regarding the validity of his claim that the purchasers of the alcoholic beverages were the persons named, and how it came about that he undertook to transport alcoholic beverages in an unlicensed vehicle in view of the previous charge against the licensee for a violation which incidently involved transportation of alcoholic beverages.

"Patrick Caridi tells a curious tale. He assumes full

responsibility as manager for the conduct of the licensed business for the past two years and has been connected therewith for the past six years. Prior to the transportation here involved he claimed that the licensee made no deliveries whatsoever of alcoholic beverages to its customers and in the past invariably refused any such request. Nevertheless, in October 1959 the Chrysler sedan was purchased in the name of the corporate licensee for family use and prospective use in making deliveries of alcoholic beverages. He did not obtain any insignia therefor, allegedly because he was careless in the matter.

"With respect to the orders Caridi claimed to have had for the alcoholic beverages he was transporting in the Chrysler on January 13th he states that he received such orders on the telephone a week or so prior to January 13th and had some type of notation thereof which he probably placed in his pocket and probably destroyed because he did not have it on January 13th. (Hence, the names and addresses he gave to the agents depended upon his recollection.) Asked what was special about the three orders that he decided to break his rule and agreed to make such deliveries, he stated 'Nothing in particular except I just decided to do it. January is a slow month and you need business.'

"Carrying the deliveries of these orders in his mind he further states that on January 13th when about to go to lunch, he observed alcoholic beverages just delivered by a wholesaler which was to fill these orders. He placed these alcoholic beverages in the Chrysler for delivery to the customers that evening as promised, and drove away, not to deliver the alcoholic beverages, but to have lunch, and was apprehended.

"Acknowledging knowledge of the violation hereinbefore referred to and that there were rumors that local licensees were supplying alcoholic beverages to Pennsylvania residents, Caridi was asked why, absent an insignia, he did not, at least, make certain that he had invoices for the alcoholic beverages to the New Jersey residents. He replied that he was merely careless. Asked why he did not immediately name the purchasers he replied that he did not want to inconvenience them.

"On February 11, 1960 while the license was under suspension for the first mentioned violation and disciplinary charges and seizure proceedings were pending for the transportation here involved, the Chrysler was again seized because Patrick Caridi had placed alcoholic beverages therein and commenced to transport such alcoholic beverages without an insignia or waybill. Asked to explain how it came about that he disregarded the lessons of the previous experiences he asserted it was a mere coincidence; that he was again careless.

"Evidence of acts similar to the one immediately under investigation may be offered for the purpose of showing the knowledge, intent or design, which are elements of the fraudulent conduct. Crosby v. Wells, 73 N.J.L. 790, at page 807.

"Generally speaking, proof of similar occurrences prior or subsequent to the one in issue is properly evidential. See Dolan v. Newark Iron & Metal Co., 18 N.J. Super. 450, at page 456.

"In my opinion Patrick Caridi has displayed a complete absence of full and frank disclosure of the true facts concerning the transportation of the alcoholic beverages. Instead, his conduct evidences a design and practice of transporting alcoholic beverages in defiance of the law and regulation. Even, although doubtful, if the alcoholic beverages were intended for delivery to residents of this State, he was not an innocent victim of circumstances but fully aware that he was violating the law, carelessly or by design.

"I therefore recommend that the application of Caridi's Bar, Inc. for the return of the deposit of \$1200.00 and the alcoholic beverages be denied and instead an appropriate Order be entered forfeiting the cash deposit and the alcoholic beverages."

No exceptions to the Hearer's Report were filed within the time limited by Rule 4 of State Regulation No. 28.

Having carefully considered the evidence, I concur in the findings and conclusions of the Hearer and shall adopt his recommendation

Accordingly, it is, on this 23rd day of June 1960,

DETERMINED and ORDERED that the seized alcoholic beverages described in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the sum of \$1200.00, representing the appraised retail value of the Chrysler sedan, paid under protest to the Director of the Division of Alcoholic Beverage Control on behalf of Caridi's Bar, Inc., whereby it obtained return of such motor vehicle, be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with the law.

WILLIAM HOWE DAVIS
DIRECTOR

SCHEDULE "A"

- 3 - 4/5 quart bottles of whiskey
- 6 - 4/5 quart bottles of vodka
- 12 - 4/5 quart bottles of champagne
- 48 - 4/5 quart bottles of whiskey
- 12 - 4/5 quart bottles of Scotch whisky
- 1 - Chrysler sedan, Serial No. GN68227, New Jersey Registration AKA607

DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED -
 PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

LAFAYETTE BAR, INC.)
 137 Mulberry Street & rear of)
 139-141 Mulberry St.)
 Newark 2, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License No. 722, issued by the Board of Alcoholic Beverage Control of the City of Newark.

Stamler and Epstein, Esqs., by Nelson F. Stamler, Esq., Attorneys for defendant-licensee.
 William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On August 12, 1959, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Two quart bottles labeled "Four Roses Blended Whiskey 86 Proof";

in violation of Rule 27 of State Regulation No. 20.'

"At the hearing held herein an ABC agent testified that he entered defendant's premises on August 12, 1959, at about 6 p.m.; that, in accordance with his instructions, he tested with reagents and a hydrometer the contents of fifty-four opened bottles of alcoholic beverages; that the contents of three opened bottles of Four Roses Blended Whiskey and three opened 4/5 quart bottles of Schenley Reserve Blended Whiskey appeared to be off in color and proof; that he seized the six bottles for further analysis by the Division chemist and gave to Louis Hollander, president of defendant corporation, a receipt for said bottles and for one unopened bottle of each of the said products, which were given to him at his request by Mr. Hollander. The agent further testified that he sealed the six opened bottles and took them and the two unopened bottles with him when he left the premises at about 8 p.m.; that he placed the eight bottles in his car where they remained over-night and, on the following morning, he placed tags on the bottles at the offices of this Division and turned them over to the Division chemist for analysis.

"The Division chemist testified that on August 13, 1959, he analyzed the contents of the eight bottles which had been delivered to him that day by the agent; that the contents of one of the opened bottles of Four Roses Blended Whiskey compared favorably with the contents of the unopened bottle of said brand; that the contents of the three opened bottles of Schenley Reserve Blended Whiskey compared favorably with the unopened bottle of said brand, but that the contents of the two opened bottles of Four Roses Blended Whiskey, which are referred to in the charge herein, varied substantially in solids from

the contents of the unopened bottle of said brand. Specifically, the chemist testified that the whiskey in one of these opened bottles (labeled No. 30,147) had a solid content of 172.4 grams per hundred liters, and the whiskey contained in the other opened bottle (labeled No. 30,148) had a solid content of 286.8 grams per hundred liters, whereas his previous tests of twenty-one sealed original bottles of the same brand had a solid content ranging from 90.4 to 120 grams per hundred liters. Based upon the foregoing testimony, the chemist expressed the opinion that the contents of the two bottles mentioned in the charge are not genuine as labeled because the solids are entirely too high. On cross-examination the chemist admitted that the contents of the two bottles mentioned in the charge compared favorably in proof and acids with the contents of genuine bottles of the same product.

"On behalf of defendant, Louis Hollander testified that he was present when the agent visited the premises on August 12, 1959; that he never tampered with the contents of any bottle, never poured the contents of one bottle into another bottle, and 'don't allow it.' Jack Gelb (a stockholder of Lafayette Bar, Inc.) testified that he was not present when the agent visited the premises on August 12, 1959. However, he further testified that he was present when the same agent previously visited the premises on May 11, 1959; that the agent tried to persuade him to admit that he had poured the contents of one bottle into other bottles; that he denied he had ever done so or tampered with any bottle, and that the agent left the premises without seizing any bottles. He also testified that defendant sells a large amount of Four Roses whiskey. Miklos Weiss testified that he has been employed as a bartender by defendant for the past nine years and that he never tampered with the contents of any bottle. He further testified that he was not present when the agent visited the premises on August 12, 1959, but that he was present during the visit on May 11, 1959, and substantially corroborated the testimony of Jack Gelb as to the actions of the agent on that day.

"In rebuttal, the ABC agent testified that he had examined the open stock of alcoholic beverages on defendant's premises during his previous visit on May 11, 1959, and had left without seizing any bottles because he was then satisfied that 'there was nothing wrong.' He denied that he then 'threatened to get this licensee on another inspection.'

"After examining the evidence and exhibits herein, and considering the brief filed by defendant's attorney, I conclude that the Division has established defendant's guilt by a fair preponderance of the believable evidence. The testimony of the agent and the chemist established continuity and the testimony of the chemist established that the two bottles mentioned in the charge bore labels which did not truly describe their contents. In fact, this is confirmed by the analysis made by other chemists, and attached to the brief filed by defendant's attorney. This analysis indicates that the solid content found in five original bottles of 'Four Roses Blended Whiskey 86 Proof' varied between 95.2 and 106.4 grams per hundred liters. There is nothing in the Alcoholic Beverage Law to indicate an intent that a licensee must have knowledge that he possesses alcoholic beverages not truly labeled in order to make him amenable to disciplinary action. Cf. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156 (Sup.Ct. 1947); English v. Hock, 137 N.J.L. 34 (Sup. Ct. 1948). Hence, it is recommended that defendant be found guilty as charged.

"Defendant has a prior record. Effective June 1, 1959, its license was suspended by the Director for twenty-five days after it pleaded non vult to charges alleging that it sold alcoholic beverages to persons apparently intoxicated and permitted obscene language on its premises. See Bulletin 1282, Item 6. It is recommended that an

On Saturday, May 28, 1960, at about 10:30 p.m., ABC agents, while in defendant's licensed premises, observed the bartender sell a pint bottle of whiskey for off-premises consumption. At about 10:45 p.m. the bartender made a similar sale of a pint bottle of whiskey to one of the agents. This agent left the premises with the alcoholic beverage and immediately returned with another agent. The two agents identified themselves to the bartender who verbally admitted the illegal sale.

Defendant has a prior adjudicated record. Effective January 18, 1960, defendant's license was suspended by the Director for ten days for an "hours" violation. Re Saleeby, Bulletin 1323, Item 4. The minimum penalty for an "hours" violation is fifteen days. Since this is the licensee's second similar violation within five years, I shall suspend his license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days. Re Cali, Bulletin 1336, Item 10.

Accordingly, it is, on this 28th day of June 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of plenary retail consumption license C-191, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Albert Saleeby, t/a Curley's, for premises 154 Jackson Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Wednesday, July 6, 1960, and terminating at 3 a.m. Sunday, July 31, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN LEVITO AND VINCENT A. MARINO)
t/a FRIENDLY HOUSE TAVERN)
319 First Street)
Jersey City, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Defendant-licensees, by Vincent A. Marino, Partner
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that, during prohibited hours, they sold alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

On Saturday, June 4, 1960, ABC agents who were outside defendants' premises observed a patron carrying a bag as he left the premises. The agents stopped the patron and found that the bag contained three cold cans of beer. All entered the premises where Nathan Taylor (the bartender) verbally admitted that he had made the sale.

Defendants have no prior adjudicated record. I shall suspend their license for the minimum period of fifteen days. Re Deock, Bulletin 1338, Item 4. Five days will be remitted for the plea, leaving a net suspension of ten days.

Accordingly, it is, on this 28th day of June 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of plenary retail consumption license C-102, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Levito and Vincent A. Marino, t/a Friendly House Tavern, for premises 319 First Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, July 5, 1960, and terminating at 2 a.m. Friday, July 15, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

P. & R. RESTAURANT, INC., A CORP.)
t/a OLYMPIC RESTAURANT)
867-873 Springfield Avenue)
Irvington, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-39, issued by the Board of Commissioners of the Town of Irvington.)

Charles M. Grosman, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On March 25, 1960, an ABC agent tested defendant's open bottles of alcoholic beverages and seized a 4/5 quart bottle labeled "Imported Seagram's V.O. Canadian Whisky A Blend 86.8 Proof" for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of the seized bottle was high in proof and solids and off in color when compared with an analysis of the genuine product.

Defendant has no prior adjudicated record. On January 15, 1957, I sent a warning letter to defendant after three opened bottles seized on defendant's premises were found to be low in proof. However, considering defendant's record which is otherwise clear, and the lapse of time since the letter was sent, I shall not consider this letter in fixing the penalty in this case. I shall suspend its license for the minimum period of ten days. Re Campbells Cafe, Inc., Bulletin 1334, Item 10. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 29th day of June 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of plenary retail consumption license C-39, issued by the Board of Commissioners of the Town of Irvington to P. & R. Restaurant Inc., A Corp., t/a Olympic Restaurant, for premises 867-873 Springfield Avenue, Irvington, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, July 11, 1960, and terminating at 2 a.m. Saturday, July 16, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SIDNEY FISHMAN)
t/a BB BAR)
32 Seventeenth Avenue)
Newark 3, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-729, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On April 12, 1960, an ABC agent tested the defendant's open bottles of alcoholic beverages and seized a number of bottles for further tests by the Division chemist, which tests disclosed that the contents of five of said bottles, when compared with the tests of samples of the genuine product of the labeled brands, varied substantially in solids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for twenty-five days, the minimum period where five bottles are involved. Re Shea, Bulletin 1308, Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 29th day of June, 1960,

ORDERED that any renewal for the 1960-61 licensing year, or transfer of Plenary Retail Consumption License C-729, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Sidney Fishman, t/a BB Bar, for premises 32 Seventeenth Avenue, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, July 12, 1960, and terminating at 2:00 a.m., Monday, August 1, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - AIDING AND ABETTING UNLAWFUL TRANSPORTATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANK BORTLEIN & WINIFRED BORTLEIN t/a BORTLEIN'S 570 Clifton Avenue Clifton, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-28, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton.)

Friend & Friend, Esqs., by Fred J. Friend, Esq., Attorneys for Defendant-licenees. David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On December 17, 1959, you sold at retail, directly or indirectly, numerous items of alcoholic beverages at less than the prices thereof listed in the then currently effective Minimum Consumer Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulation No. 30.
"2. On December 17, 1959, you knowingly aided and abetted John De Vries to transport alcoholic beverages in this State without requisite license or special permit, contrary to R. S. 33:1-2, in violation of R.S. 33:1-52."

Acting on information alleging that alcoholic beverages were purchased by an industrial concern below the permissive price, ABC agents interviewed an officer of such concern who displayed an invoice dated December 17, 1959 issued by the defendant-licensees evidencing the sale to such concern of 12 cases of alcoholic beverages for the total purchase price of \$590.00. At the time of such purchase, the correct price for these alcoholic beverages, less the five per cent permissive discount, was \$632.13. Thereafter, ABC agents questioned Winifred Bortlein, one of the defendant-licensees, who acknowledged that the above facts concerning such sale are accurate. The licensee further stated that the officer of the industrial concern transported the 12 cases of alcoholic beverages in his car from the licensed premises.

Defendants have no prior adjudicated record. I shall suspend defendants' license for twenty days on Charge 1 (Re Bond Wine and Liquor Store, Bulletin 1142, Item 4), because of the large amount of alcoholic beverages involved, and for ten days on Charge 2 (Re Tobias, Bulletin 1016, Item 11), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 29th day of June 1960,

ORDERED that any renewal for the 1960-61 licensing year or transfer of Plenary Retail Distribution License D-28, issued by

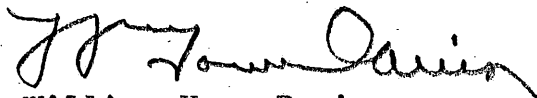
the Municipal Board of Alcoholic Beverage Control of the City of Clifton to Frank Bortlein & Winifred Bortlein, t/a Bortlein's, for premises 570 Clifton Avenue, Clifton, be and the same is hereby suspended for twenty-five (25) days, commencing at 9:00 a.m., Monday, July 11, 1960 and terminating at 9:00 a.m., Friday, August 5, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Gordon Bass & Company, Inc.
1089 Hudson Street
Union, N. J.

Application filed August 26, 1960 for place-to-place transfer of Plenary Wholesale License No. W-46 from 15-21 Hill Street, Newark, N. J.


William Howe Davis
Director